It will be noted that the section requires the summons to be signed by the clerk and subscribed with the name of the officer by whom the same shall be issued, who would be either the clerk or his deputy. Just what the legislature and the commission intended thereby is not clear. It is barely possible that it was considered desirable to know whether the clerk or his deputy issued the summons, and that it was intended to secure such information by this provision. It is more likely, however, that the provision is the result of mistake rather than intention. A mistake in the language of that section of the act dealing with the form of the summons occurred in the revision of 1846 (§ 1, Chap. 97, Rev. Stat. Mich. 1846), which rendered the statute uncertain as to whether it required the clerk or other issuing officer, or the plaintiff's attorney, or both, to sign or subscribe the summons. The form of summons prescribed by the court rules remedied the difficulty by requiring the signature of the clerk and the indorsement or subscription of the plaintiff's attorney. It is probable that the proposers and enactors of the recent Judicature Act intended to correct the ambiguity in the former statute by the section quoted, and this would have been accomplished had the words "and the officer by whom the same shall be issued," which conclude that portion quoted above, been omitted. This conclusion is strengthened by a note appended to the said section in the Commission's report (p. 93 of report), which indicates that the intent was to merge in this section the contents of the section of the old statute (§ 9984, Mich. Comp. Law 1897), which dealt with the form of process and of a portion of the sections (§§ 452 and 453, Mich. Comp. Laws, 1897) dealing with the chancery subpoena, none of which required the clerk to sign the process twice. The new statute as it stands requires too much, *i. e.,* two signatures of the clerk instead of one.

As indicated above the ambiguity in the old statute was remedied by the court rules (§ c, Circuit Court Rule I). The court will remove the difficulty pointed out in the new act by the same means. If the court in the rules should provide the same form of summons as is at present required thereby, a nice question might be raised as to the court's power to make sufficient a summons not containing some of the statutory requirements. As such a question, if it did arise, would be finally decided by the tribunal upon which devolves the duty of prescribing the rules, the decision would undoubtedly uphold the form of summons prescribed by the rules. G. S.

"Reasonable Doubt" and "Preponderance of Evidence."—In the case of *People* v. *Eggleston,* 152 N. W. 944 (Mich. 1915), the trial court instructed the jury that the defense of insanity "must be established by a preponderance of proof." This instruction the Supreme Court holds erroneous, saying, "While it is true that at the outset there is a presumption of sanity, as soon as evidence is introduced on behalf of respondent tending to overthrow that presumption, the burden of proof rests with the people to convince the jury beyond reasonable doubt of the respondent's sanity, that being one of the necessary conditions upon which guilt may be predicated."

The court cites *People* v. *Garbutt,* 17 Mich. 9, 97 Am. Dec. 162, and might also have cited *People* v. *Quimby,* 134 Mich. 625, 96 N. W. 1061 and *People* v. *Muste,* 137 Mich. 216, 100 N. W. 455, which, though in conflict with the decisions of some other courts, abundantly establish for the State of Michigan the doctrine announced in the sentence quoted above, and would seem to remove all difficulty from the problem, except the difficulty which is inherent in any use of the words "beyond reasonable doubt," the difficulty of understanding just what "degree of positiveness of persuasion" the words call for.

The court, however, proceeds to state the case of *People* v. *Finley,* 38 Mich., 482, where the court approved an instruction that, after the introduction of evidence tending to show that the respondent was insane, it became the duty of the prosecution "to prove the sanity of the defendant by at least a fair preponderance of the evidence," on the theory [we are told in an accurate paraphrase of a part of the opinion] that, "if the testimony introduced on behalf of respondent had been overcome in the minds of the jury by adequate proof, it would be difficult to conceive how they could further regard it, or how they could entertain a reasonable doubt, if convinced of the falsity of the only ground on which the defense rested."

There is no comment on this case, so that we would naturally infer that it met with the approval of the court. Yet there is difficulty in reconciling the *Finley* case, as thus stated, with the doctrine set forth above and the cases on which it rests. So long as we insist that proof beyond a reasonable doubt is something more than a preponderance of proof, we cannot use the expressions as interchangeable, nor treat an instruction requiring proof by a preponderance of evidence as the equivalent of one requiring proof beyond a reasonable doubt. Yet this is precisely what the *Finley* case seems to do.

If we turn, however, to the original report of that case, we find that the court, while indulging in the reasoning attributed to it in the principal case, relied upon a reading of the quoted instruction in connection with the rest of the charge, saying, "We do not understand the charge as at all designed or calculated to qualify what had been before said on the general question of proving malice beyond a reasonable doubt"; and it should be further noted that, by approving this instruction, the court was able to affirm the decision, which it did, with the remark that it was "not disposed to criticize with any great nicety the omission of courts to give requests which tend to distract the minds of jurors by calling special attention to metaphysical subtleties."

The case presents, then, a laudable effort by the court to overlook, in the interests of the expeditious administration of justice, the technical imperfection of a charge which did not substantially prejudice the appellant, and the reasoning of the court set forth in the principal case should be regarded as designed to show, not that the instruction given was correct, but that it was doubtful whether the difference between that instruction and the correct one could be of any significance to the jury.

But, such being the character of the case, why drag it into the light in an opinion which, accompanying a judgment of reversal, need do no more

than show why the instruction given was wrong and indicate what instructions should be given upon a new trial? And, if the case must be noticed, why set it out in terms which suggest entire approval of the instruction therein involved? If it was the purpose of the court to unsettle the rule established by the other cases above cited, we were certainly entitled to a fuller statement of the position of the court. If such was not the purpose, the reference to this case is misleading. E. N. D.

THE POWER TO REGULATE MOVING PICTURES.—The right of the state legislature, in the exercise of its police power, to provide for a board of censorship of motion picture films has again been affirmed in the case of *Buffalo Branch, Mutual Film Corporation, et al* v. *Breitinger, et al,* decided in the supreme court of Pennsylvania and reported in 95 Atl. 433. The case reaches the same conclusion as was reached in the cases of *Mutual Film Corporation* v. *Industrial Commission of Ohio,* 35 Sup. Ct. 387, and *Mutual Film Corporation of Missouri* v. *Hodges, et al,* 35 Sup. Ct. 393, commented on in 13 MICHIGAN LAW REVIEW, 515. It is in some respects, however, a more significant case.

In the two cases decided by the United States supreme court the decision was made to turn very largely upon a definition of the term "freedom of speech," which was held not to include motion picture exhibitions. It could perhaps reasonably be asked whether the exhibition of a motion picture film is not such a publication of the sentiments of the author, actors and producer that it could be regarded as a communication and as within the protection of the clause guaranteeing the freedom of speech. In that view, the opinion of Mr. Justice MCKENNA in the federal cases leaves something to be desired. In the Pennsylvania case, however, where the facts are substantially the same, the court has squarely faced the seeming conflict between the police power of the state and the guarantees of the Fourteenth Amendment. The statute in question is justified solely as an exercise of that power, even though it be in derogation of some guaranteed right of the individual. The court, quoting, says, "in the exercise of the police power the Legislature may enact laws in the interest of public morals, and to protect the lives, health, and safety of persons following specific callings, and thus indirectly interfere with freedom of contract, *i. e.,* with individual liberty and the right to acquire and use property."

While the question of the censorship of motion picture films has thus far given no embarrassment to the courts, there is no doubt that in this so-called "social legislation," of which the amount has been great in recent years, and which can be justified, if at all, only on the grounds of the police power, the courts have experienced no little difficulty in establishing an equilibrium between the exercise of the police power and the individual rights given by the constitution. The determination of questions of this type presents a peculiarity of jurisprudence that is worthy of notice.

Before condemning a statute as unconstitutional the court should be convinced that the violation is "plain and clear," so "manifest as to leave no